

Docket No.: 66729/P017US/10405597
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Mark Lesswing et al.

Application No.: 09/577,386

Confirmation No.: 3851

Filed: May 23, 2000

Art Unit: 3627

For: NOVEL METHOD AND APPARATUS FOR
REPRICING A REIMBURSEMENT CLAIM
AGAINST A CONTRACT

Examiner: V. Frenel

REPLY BRIEF

MS Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Reply Brief is being submitted in response to the Examiner's Answer mailed
October 9, 2007.

Arguments begin on page 2.

ARGUMENTS

Appellant hereby reasserts the arguments previously presented in the Appeal Brief of June 29, 2007 (*Appeal Brief*). For the sake of brevity, however, Appellant does not restate each of those arguments herein, but instead submits the following supplemental remarks in reply to the Examiner's Answer of October 9, 2007 (*Examiner's Answer*).

While the following remarks are directed to the independent claims of the present application. Appellant respectfully reasserts the arguments presented in the *Appeal Brief* for the separately-argued dependent claims, and thus maintains that those separately-argued claims do not stand or fall together, *see* 37 C.F.R. § 41.37(c)(1)(vii).

A. Claim Rejections Under 35 U.S.C. § 103(a)

Claims 1-11 and 24-86 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over *Tarter* in view of *Dart*. Appellant traverses the rejection and asserts that the claims are allowable for the reasons stated below.

Independent Claim 1

As discussed in the *Appeal Brief*, the applied combination of *Tarter* and *Dart* fails to teach or suggest at least the following elements of independent claim 1:

i) "providing programming code for converting each contract into a plurality of terms and a contract identifier code, each term, of the plurality of terms, containing qualification codes, calculation codes and at least two priority notes, and arranging the plurality of terms, of said contract, into a sequential series of terms",

ii) "providing programming code for sequentially comparing each claim code, of the series of claim lines, against each qualification code, of the plurality of terms and when a claim code, of a claim line, is substantially equal to a qualification code, of a term, identifying said term as a matching term associated to said claim line", and

iii) "providing programming code for determining any priority conditions associated to all of the matching terms, and eliminating any matching terms that are excluded by said priority

conditions; and providing programming code for determining a reimbursement amount for the claim by processing the calculation codes of the non-eliminated matching terms.”

The *Examiner's Answer* maintains that the applied combination of *Tarter* and *Dart* does teach or suggest these elements of claim 1. Appellant addresses the *Examiner's Answer* for each of these elements below.

i) providing programming code for converting each contract into a plurality of terms and a contract identifier code, each term, of the plurality of terms, containing qualification codes, calculation codes and at least two priority notes, and arranging the plurality of terms, of said contract, into a sequential series of terms

Regarding this element of claim 1, the *Examiner's Answer* makes clear that the Examiner relies upon *Tarter* as disclosing this element, *see* item (ii) on page 40 of the *Examiner's Answer*. In particular, the *Examiner's Answer* asserts “Examiner interprets (HMO, PPO and other government programs such as (Medicaid etc.) to have included qualification codes calculation codes, or priority notes”, item (ii) on page 40 of the *Examiner's Answer*, citing to the Abstract, col. 2, lines 33-56, and col. 14, lines 44-65 of *Tarter*. This assertion, even if true, falls short of the claimed element. That is, even if HMOs, PPOs, etc. have made use of qualification codes, calculation codes, etc., there is no disclosure whatsoever that has been identified for programming code for converting a contract into a plurality of terms and a contract identifier code, where each term contains qualification codes, calculation codes and at least two priority notes. Moreover, there is no disclosure whatsoever that has been identified regarding programming code that arranges the plurality of terms into a sequential series of terms.

Thus, the mere mention of various plan sponsors, such as HMOs, PPOs, etc. in *Tarter* falls well short of any disclosure or suggestion of programming code that performs the actions recited in claim 1.

The *Examiner's Answer* further asserts in item (iii) on pages 40-41 thereof that the “Examiner interprets (the summary file, the bulletin file and the accumulated transaction file, FIG. 17.... The information available through the help desk display screens is updated on a

regular basis”, and thus the Examiner concludes that this portion of *Tarter* discloses converting each contract into a plurality of terms containing qualification codes, calculation codes, and at least two priority notes, as recited by this element of claim 1.

In discussing FIGS. 17A-17P, *Tarter* discloses at col. 11, lines 46-52:

CHARMS also provides the means for service providers to receive answers to questions over the telephone. CHARMS contains a variety of help desk screens and procedures that provide the means for the System Operator to access specific desired information stored in CHARMS's memory components. See FIGS. 17-17P.

Additionally, at col. 19, lines

To help resolve a service provider's request for information, the System Operator has access, through a series of help desk display screens, FIGS. 17A-17P, to a number of databases stored by CHARMS, including the provider and payor profile records, the summary file, the bulletin file, and the accumulated transaction file. FIG. 17. The information available through the help desk display screens is updated on a regular basis, which in one preferred embodiment is daily.

This appears to provide an interface to present certain claims-related information from database(s) to a helpdesk operator. However, this portion of *Tarter* in no way teaches or suggests programming code for converting a contract into a plurality of terms containing qualification codes, calculation codes, and at least two priority notes. Indeed, it does not teach or suggest that the information comes from any such conversion of a contract. Rather, the above portion of *Tarter* merely discloses presenting information contained in databases to a user via a user interface.

Accordingly, because this element of claim 1 is not taught or suggested by the applied combination, the rejection of claim 1 should be overturned.

ii) providing programming code for sequentially comparing each claim code, of the series of claim lines, against each qualification code, of the plurality of terms and when a claim code, of a claim line, is substantially equal to a qualification code, of a term, identifying said term as a matching term associated to said claim line

The *Examiner's Answer* maintains that *Tarter* also discloses this further element of claim 1, see item (iv) on page 41 of the *Examiner's Answer*. However, as discussed in the *Appeal Brief*, *Tarter* fails to teach or suggest “providing programming code for sequentially comparing each claim code, of the series of claim lines, against each qualification code, of the plurality of terms and when a claim code, of a claim line, is substantially equal to a qualification code, of a term, identifying said term as a matching term associated to said claim line”. For instance, *Tarter* does not teach or suggest comparing each claim code of a series of claim lines against a qualification code. Further, *Tarter* does not teach or suggest identifying a term as a matching term associated to the claim line when a claim code of the claim line is substantially equal to the qualification code. These actions are completely absent from the teaching of *Tarter*.

The *Examiner's Answer* cites to col. 15, line 40 – col. 16, line 8 of *Tarter* as disclosing the above element of claim 1. The cited portion of *Tarter* provides:

Using the service provider's investment grade third party receivables, CHARMS provides the means to create a portfolio of asset backed securities. The asset backed securities will be sold by one or more SPVs that will be the obligors of the securities. If appropriate, CHARMS will incorporate the services of a liquidity and credit enhancer to improve the ratings of the portfolios, provide access to the commercial paper market, add extra funding flexibility and thereby reduce the overall cost of funds.

CHARMS and the SPVs make use of a variety of securitized financial instruments. The most common are commercial paper and short to medium term notes. To gain access to the commercial paper market, CHARMS, in one embodiment of the present invention, provides the means to obtain through a commercial bank a liquidity capability to promptly retire the short term maturing commercial paper. Further, to facilitate the requisite AA or better rating that creates a steady demand from the commercial paper market, CHARMS, as an unknown sponsor of a securitized asset, may require a credit enhancement.

Each SPV will have a clean balance sheet with no liabilities other than the collateralized security. Any fees due to CHARMS as services will be subordinated to the interests of the security holders. A collateral agent or trustee

will monitor and control the collateralized assets to protect the investors.

As explained above, CHARMS offers service providers a variety of pricing and discount scenarios, and most service providers will incur a blended discount rate. Also as explained above, CHARMS will screen all adjudicated claims to determine their creditworthiness and in turn to adjust the target discount rate. By utilizing a broad range of financial instruments ranging from commercial paper to medium term notes, CHARMS, in one embodiment of the present invention, selects the most appropriate mix to match the term of the underlying collateral assets.

As can be seen, this portion of *Tarter* does not disclose in detail the recited action of “sequentially comparing each claim code, of the series of claim lines, against each qualification code, of the plurality of terms and when a claim code, of a claim line, is substantially equal to a qualification code, of a term, identifying said term as a matching term associated to said claim line”. While it mentions screening adjudicated claims and offering pricing and discount scenarios, the above teaching of *Tarter* does not disclose comparing each claim code of a series of claim lines against each qualification code and identifying the term as matching when the claim code is substantially equal to a qualification code.

Thus, because this further element of claim 1 is not taught or suggested by the applied combination, the rejection of claim 1 should be overturned.

iii) providing programming code for determining any priority conditions associated to all of the matching terms, and eliminating any matching terms that are excluded by said priority conditions; and providing programming code for determining a reimbursement amount for the claim by processing the calculation codes of the non-eliminated matching terms

The *Examiner's Answer* maintains that these elements are found in *Dart*, see item (vi) on page 42 of the *Examiner's Answer*. Appellant respectfully disagrees.

In general, *Dart* is directed to a software program that assists a physician in forming a proper claim that contains the proper codes for services rendered to a patient so that the resulting claim that is submitted for reimbursement by an insurer (e.g., Medicare, etc.) is compliant with rules and regulations pertaining to such claims to prevent the physician from encountering penalties associated with submitting non-compliant claims. While *Dart* aids a physician in

preparing a compliant claim for services rendered to a patient, *Dart* is not directed to repricing such a reimbursement claim under at least one contract. That is, *Dart* is not concerned with how the reimbursement claim is processed (e.g., against a contract) for payment to the physician. Instead, *Dart* is solely concerned with aiding a physician in forming a compliant claim in the first place. *Dart* in no way teaches or suggests comparing each claim code against each qualification code to identify matching terms, and determining any priority conditions associated to all of the matching terms and eliminating any matching terms that are excluded by the priority conditions. Again, *Dart* is simply not concerned with processing a claim code against a contract to identify matching terms, but is rather merely directed to forming a compliant claim in the first place.

In view of the above, the applied combination of *Tarter* and *Dart* fails to teach or suggest each and every element of independent claim 1. As such, independent claim 1 is not obvious under 35 U.S.C. § 103(a) over *Tarter* in view of *Dart*. Therefore, Appellant respectfully requests that this rejection of claim 1 be overturned.

Independent Claim 24

Independent claim 24 recites, in part, “computer readable program code means for causing a computer to generate a rate sheet which represents a contract, of the at least one contract, the rate sheet containing one or more rate terms that represent the contractual terms of said contract, and containing a rate identifier code that represents the contract identifier of said contract”. The *Examiner’s Answer* maintains that *Tarter* discloses this element of claim 24.

However, as discussed in the *Appeal Brief*, the relied-upon portion of *Tarter* teaches “Transaction Processing,” “Funds Collection,” and “Funds Management and Reconciliation”. This portion of *Tarter* does not teach or suggest computer readable program code causing a computer to generate a rate sheet which represents a contract, of the at least one contract, the rate sheet containing one or more rate terms that represent the contractual terms of the contract, and containing a rate identifier code that represents the contract identifier of the contract. Thus, the

rejection over *Tarter* is improper. *Dart* is not relied-upon as disclosing this element, nor does it do so.

Claim 24 further recites “computer readable program code means for causing a computer to generate the claim, the claim having a claim identifier codes and a series of claim lines, each claim line including a claim code, a unit number and a code charge”. Again, the *Examiner’s Answer* maintains that *Tarter* discloses this element. However, for the reasons discussed in the *Appeal Brief* and further discussed above with claim 1, *Tarter* fails to teach or suggest generating a claim having a claim identifier codes and a series of claim lines with each claim line including a claim code, unit number and code charge. Thus, the rejection over *Tarter* is improper. *Dart* is not relied-upon as disclosing this element, nor does it do so.

Claim 24 further recites “computer readable program code means for causing a computer to reprice the claim against a rate sheet, and to generate and assign a reimbursement amount to said repriced claim”. Again, the *Examiner’s Answer* maintains that *Tarter* discloses this element. However, for the reasons discussed in the *Appeal Brief* and further discussed above with claim 1, *Tarter* fails to teach or suggest repricing a claim against a rate sheet and generating and assigning a reimbursement amount to a repriced claim. Thus, the rejection over *Tarter* is improper. *Dart* is not relied-upon as disclosing this element, nor does it do so.

In view of the above, the applied combination of *Tarter* and *Dart* fails to teach or suggest each and every element of independent claim 24. As such, independent claim 24 is not obvious under 35 U.S.C. § 103(a) over *Tarter* in view of *Dart*. Accordingly, Appellant respectfully requests that the rejection of claim 24 be overturned.

Independent Claim 40

Independent claim 40 recites, in part, “comparing each claim code, of the claim, against each qualification code, of each contractual term, of a contract”. The *Examiner’s Answer* maintains that *Tarter* discloses this element. However, for the reasons discussed in the *Appeal Brief* and further discussed above with claim 1, *Tarter* fails to teach or suggest comparing each claim code, of the claim, against each qualification code, of each contractual term, of a contract.

While *Tarter* mentions adjudicated claims, it provides no specific disclosure or suggestion of the recited comparing of each claim code of a claim against each qualification code of each contractual term of a contract. Thus, the rejection over *Tarter* is improper. *Dart* is not relied-upon as disclosing this element, nor does it do so.

Further, claim 40 recites “when a qualification code, of a contractual term, is satisfied by a claim code, of a claim line, identifying said contractual term as a matching contractual term associated to said claim line, and creating a list of all matching contractual terms”. Again, the *Examiner's Answer* maintains that *Tarter* discloses this element. However, for the reasons discussed in the *Appeal Brief* and further discussed above with claim 1, *Tarter* fails to teach or suggest using a qualification code of a contractual term, and it certainly fails to teach or suggest identifying a contractual term as a matching term associated to the claim line when the qualification code is satisfied by a claim code. Nor does *Tarter* teach or suggest creating a list of all matching contractual terms. There is simply no hint whatsoever of such a list being created in *Tarter*. *Dart* is not relied upon as teaching or suggesting this element, nor does it do so.

Independent claim 40 further recites “determining any priority conditions associated to the matching contractual terms, and eliminating any matching contractual terms, from said list of matching terms that are excluded by said priority conditions”. The *Examiner's Answer* maintains that *Dart* teaches or suggests this element of claim 40. However, as discussed in the *Appeal Brief*, *Dart* fails to provide any teaching whatsoever of “determining any priority conditions associated to the matching contractual terms, and eliminating any matching contractual terms, from said list of matching terms that are excluded by said priority conditions.” Indeed, the teaching of *Dart* is not directed to repricing a reimbursement claim under a contract, but is instead directed to aiding a physician in preparing a compliant claim form for services rendered to a patient. That is, *Dart* is not concerned with how the reimbursement claim is processed (e.g., against a contract) for payment to the physician, but is instead solely concerned with aiding a physician in forming a compliant claim in the first place.

In view of the above, the applied combination of *Tarter* and *Dart* fails to teach or suggest each and every element of independent claim 40. As such, independent claim 40 is not obvious

under 35 U.S.C. § 103(a) over *Tarter* in view of *Dart*. Therefore, Appellant respectfully requests that this rejection of claim 40 be overturned.

Independent Claim 53

Independent claim 53 recites, in part, “computer readable program code means for causing a computer to generate a rate sheet representing the contractual terms of said contract, the rate sheet containing identifier codes, and one or more rate terms”. The *Examiner’s Answer* maintains that *Tarter* discloses this element. However, for the reasons discussed in the *Appeal Brief* and further discussed above with claim 1, *Tarter* fails to teach or suggest causing a computer to generate a rate sheet representing the contractual terms of said contract, the rate sheet containing identifier codes, and one or more rate terms. While *Tarter* mentions adjudicated claims and it mentions a user interface for presenting information from databases to a helpdesk operator (in its Figs. 17A-17P), *Tarter* does not teach or suggest generating a rate sheet representing contractual terms of a contract where the rate sheet contains identifier codes and one or more rate terms. Thus, the rejection over *Tarter* is improper. *Dart* is not relied-upon as disclosing this element, nor does it do so.

Claim 53 further recites “computer readable program code means for causing a computer to arrange the rate terms in a sequential series of terms”. The *Examiner’s Answer* maintains that *Dart* discloses this element. However, *Dart* does not teach or suggest arranging rate terms in a sequential series of terms. Thus, the combination of *Tarter* and *Dart* further fails to teach or suggest this element of claim 53.

Claim 53 further recites “computer readable program code means for graphically conveying the rate sheet by displaying the sequential series of terms in an English language representation.”. The *Examiner’s Answer* also relies upon *Dart* as teaching or suggesting this element. However, the relied upon portion of *Dart* fails to teach or suggest graphically conveying a rate sheet by displaying a sequential series of terms. Thus, the combination of *Tarter* and *Dart* further fails to teach or suggest this element of claim 53.

In view of the above, the applied combination of *Tarter* and *Dart* fails to teach or suggest each and every element of independent claim 53. As such, independent claim 53 is not obvious under 35 U.S.C. § 103(a) over *Tarter* in view of *Dart*. Therefore, Appellant respectfully requests that this rejection of claim 53 be overturned.

Independent Claim 60

Independent claim 60 recites, in part, “associating, with said at least one term, information, stored to computer-readable medium, representing at least one qualifier having a corresponding calculation method, wherein the at least one qualifier identifies at least one condition to be satisfied by a claim for reimbursement in order to trigger the corresponding calculation method.” The applied combination of *Tarter* and *Dart* fails to teach or suggest at least this element of claim 60.

Therefore, Appellant respectfully requests that this rejection of claim 60 be overturned.

Independent Claim 65

Independent claim 65 recites, in part, “code for associating with the at least one term a qualification having a corresponding calculation method, wherein the qualification identifies when a received claim for reimbursement qualifies for reimbursement, under the term with which the qualification is associated, according to the corresponding calculation method.” The applied combination of *Tarter* and *Dart* fails to teach or suggest at least this element of claim 65. Therefore, Appellant respectfully requests that this rejection of claim 65 be overturned.

Independent Claim 71

Independent claim 71 recites, in part, “code for generating a user interface providing a phrase describing a term of a contract for reimbursement, wherein said phrase includes at least one input field for receiving input from a user”. The applied combination of *Tarter* and *Dart* fails to teach or suggest at least this element of claim 71. Therefore, Appellant respectfully requests that this rejection of claim 71 be withdrawn.

Independent Claim 79

Independent claim 79 recites, in part, “code for generating output presenting at least one phrase describing the terms of the defined contract for reimbursement.” The applied combination of *Tarter* and *Dart* fails to teach or suggest at least this element of independent claim 79. Therefore, Appellant respectfully requests that this rejection of claim 79 be overturned.

Independent Claim 82

Independent claim 82 recites, in part, “for each of the at least one term, receiving, by said processor-based device, input identifying at least one qualification that specifies at least one condition to be satisfied in a claim for the claim to qualify for reimbursement according to the corresponding contract term”. The applied combination of *Tarter* and *Dart* fails to teach or suggest at least this element of independent claim 82. Therefore, Appellant respectfully requests that this rejection of claim 82 be overturned.

Independent Claim 84

Independent claim 84 recites, in part, “defining a reimbursement contract in computer-executable program code stored to a computer-readable medium, where said definition of said reimbursement contract includes information associating at least one term of the contract with at least one qualifier having a corresponding calculation method”. The applied combination of *Tarter* and *Dart* fails to teach or suggest at least this element of independent claim 84. Therefore, Appellant respectfully requests that this rejection of claim 84 be overturned.

Conclusion

In view of the above, Appellant requests that the board overturn the outstanding rejections of claims 1-11 and 24-86.

Appellant believes no fee is due with this reply brief. However, if a fee is due, please charge our Deposit Account No. 50-3948, under Order No. 66729/P017US/10405597 from which the undersigned is authorized to draw.

Dated: December 10, 2007

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4).

Dated: December 10, 2007

Signature: Donna Forbit
(Donna Forbit)

Respectfully submitted,

By 

Jody C. Bishop

Registration No.: 44,034

FULBRIGHT & JAWORSKI L.L.P.

2200 Ross Avenue, Suite 2800

Dallas, Texas 75201-2784

(214) 855-8007

(214) 855-8200 (Fax)

Attorney for Applicant